



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 6, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0159

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.180 – Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies	Sustained
Imposed Discipline		
Written Reprimand		

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.140-POL – Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)
# 2	6.220-POL-2 – Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained - Lawful and Proper (Expedited)
# 3	6.180 – Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies	Not Sustained - Lawful and Proper (Expedited)

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.140-POL – Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)
# 2	6.220-POL-2 – Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained - Lawful and Proper (Expedited)
# 3	6.180 – Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies	Not Sustained - Lawful and Proper (Expedited)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

Named Employee #2 (NE#2) and Named Employee #3 (NE#3) responded to an apartment for a domestic violence (DV) dispute. The Complainant alleged that NE#2 and NE#3 attempted to detain him because he was a Black male. The Complainant further alleged that NE#2 and NE#3 unlawfully searched and seized items from the apartment. Named



Employee #1 (NE#1)—a sergeant—responded to the apartment after officers arrested the Complainant. OPA alleged that NE#1 exceeded the scope of a warrantless community caretaking search.

ADMINISTRATIVE NOTE:

This case was approved for Expedited Investigation for NE#2 and NE#3. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employees. As such, OPA did not interview NE#2 and NE#3 in this case. On May 18, 2023, OIG certified OPA's Expedited Investigation as thorough, timely, and objective.

This case proceeded to a full investigation for NE#1. On August 23, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

During its investigation, OPA reviewed the OPA complaint, computer-aided dispatch (CAD) call report, 9-1-1 audio recordings, body-worn video (BWV), and supplement reports. OPA also interviewed NE#1.

A. OPA Complaint

The Complainant filed a web-based complaint. The Complainant wrote that on August 29, 2022, officers responded to a DV dispute at an apartment complex. The Complainant wrote that NE#2 and NE#3 arrived, saw the Complainant, a Black male, claimed they wanted to speak with him, but took him into custody. The Complainant wrote that there was no description of the suspect because the 9-1-1 caller did not provide one, so NE#2 and NE#3 "automatically assumed this [Black] male" was their suspect, despite the apartment complex being "occupied by all races." The Complainant also wrote that NE#2 and NE#3 returned to the apartment, found no victim, searched it, and unlawfully seized items.

B. Computer-Aided Dispatch (CAD) Call Report and 9-1-1 Audio Recordings

On August 29, 2022, at 11:01 PM, CAD call remarks noted, "COULD HEAR MALE AND FEMALE ARGUING... [THE] CALLER STATED THAT HE NEEDED TO RETRIEVE HIS ITEMS... KEPT HANGING UP ON ME AND ONLY GIVING ADDRESS OF [NUMBER]." Dispatch noted three callbacks and a caller saying, "Please, what do you want me to do? Please leave." Dispatch noted that the caller sounded distressed, a male voice was heard in the background, the call disconnected, and no one answered the dispatcher's callback. Dispatch noted another call that sounded like a female yelling at the caller, and then the call disconnected. Dispatch noted another call with a female on the line saying that the male kept choking her, and then the call disconnected.

OPA reviewed five 9-1-1 audio recordings consistent with the CAD call report. OPA noted a man and a woman arguing, who often failed to answer the dispatcher's questions or responded incoherently or inaudibly. OPA also noted call disconnections in the recordings.



C. Body-Worn Video (BWV) and Supplemental Reports

NE#2's and NE#3's BWV captured them arriving at the complex, taking an elevator to the seventh floor, and approaching the apartment relayed by dispatch at the end of a hallway. The Complainant—who appeared to be on a cell phone—was at the end of that hallway. NE#2 wrote in his supplement report, "As we got closer, [the Complainant] nervously looked up at us and down at his cell phone several times." BWV captured NE#2, saying, "Come here. Seattle police. Come here." The Complainant ran towards a stairwell exit, and a pursuit ensued. NE#2, with NE#3 behind, chased the Complainant. NE#2 ran down the stairwell while NE#3 shouted, "Stop! Seattle police!" The Complainant entered the sixth floor and ran down a hallway. During the chase, NE#2 said, "He's got something in his hand!" The Complainant looked over his left shoulder, pointed a gun at NE#2 with his right hand, and fired one shot. NE#2 said, "He's got a gun! He's shooting at us!" NE#2 and NE#3 took cover, resumed the pursuit for a few seconds, and terminated the pursuit. NE#3 radioed the Complainant's description.

NE#2 wrote in his supplement report that he and NE#3 "feared [the Complainant] may have killed or seriously injured the caller" inside the apartment. BWV captured NE#2 and NE#3 returning to that apartment, finding the front door ajar. As NE#2 and NE#3 entered, NE#2 said, "Seattle police. Is anybody here? Is anybody hurt? Call out to us." The apartment was in disarray, including items covering the floor and two kicked-in doors. NE#2 and NE#3 searched the apartment but found no one. NE#2 and other officers located and arrested the Complainant at a nearby bus stop.

NE#1's BWV captured the Complainant's arrest. NE#1 and NE#3 returned to the apartment. NE#1 wrote in a supplement report that he returned "to check again for the victim" and "photograph the initial disturbance that generated the 9-1-1 call." NE#3 entered first and said, "Seattle police. Make yourself known." NE#1 searched the apartment and ordered NE#3 to photograph "this stuff." NE#3 photographed the apartment with a cell phone. NE#1 and NE#3 found no one there.

OPA reviewed NE#1's, NE#2's, and NE#3's supplement reports and found them consistent with the BWV summarized above.

D. OPA Interview

The Complainant's attorney declined OPA's request to interview the Complainant.

OPA interviewed NE#1. NE#1 said he returned to the apartment with NE#3 to check for the possible female victim because NE#2 and NE#3 could have missed her in their initial sweep. NE#1 believed a victim could have been injured or killed based on the Complainant having shot at NE#2 and NE#3 during their pursuit. NE#1 believed he could enter the apartment "to do a welfare check for community caretaking" since the door was ajar and it was a DV call. NE#1 said he had no warrant when he entered the apartment. NE#1 said he executed a community caretaking search based on the female victim needing assistance for health or safety concerns or an imminent threat of substantial bodily injury to CM#1. NE#1 believed there was a reasonable basis to associate the need for assistance with the place searched. NE#1 said the need to search the apartment was dispelled after they could not find CM#1, so he terminated the search.

NE#1 said he saw signs of a disturbance and asked NE#3 to photograph and "document plain view evidence that was right in front of us and obvious signs of a domestic disturbance, which is the crime we're investigating." NE#1 said the evidence was in plain view once he and NE#3 entered the apartment but not outside the unit. NE#1 said the



photographs he directed NE#3 to take were for a criminal investigation. NE#1 denied using community caretaking as a pretext for an investigatory search, saying that he and NE#3 did not “go digging” through the apartment but only documented what was in plain view. NE#1 said he did not obtain the Complainant’s or the female victim’s consent to search the apartment.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

6.180 – Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies

OPA alleged that NE#1 conducted an unlawful warrantless search.

Officers may not make warrantless searches unless an exception applies. *See* SPD Policy 6.180(1). Under community caretaking searches, the need to protect or preserve life, avoid serious injury, or protect property in danger of damage may justify an entry that would otherwise be illegal absent an emergency. SPD Policy 6.180-POL-1. While an entry may be justified under the emergency doctrine, “a warrant will generally need to be obtained before further investigation or seizure of evidence.” *Id.* SPD Policy 6.180-POL-1 also provides, “Officers will act under a community caretaking role in emergency action, not in their evidence gathering role.” The plain view doctrine applies when officers inadvertently discover contraband or evidence after lawfully intruding into a constitutionally protected area, such as a residence or a vehicle. SPD Policy 6.180-POL-4. The contraband or evidence must be immediately recognizable and in plain view. *Id.* Officers must be in that protected place with consent or on legitimate police business. *Id.*

Here, NE#1 said he entered the apartment “to do a welfare check for community caretaking” since the door was ajar and it was a DV call. NE#2 and NE#3 had already swept the apartment, finding no one. NE#1 said NE#2 and NE#3 may have missed CM#1 in their initial sweep.

Based on community caretaking grounds, NE#1’s entry violated policy for several reasons. First, the policy requires a need to protect or preserve life or avoid serious injury to justify a community caretaking search. SPD Policy 6.180-POL-1. However, no additional evidence was known to NE#1—after NE#2’s and NE#3’s initial sweep—that indicated a victim was in the apartment. If NE#1 believed a victim entered the apartment after NE#2’s and NE#3’s initial sweep, NE#1 could have knocked and announced at the door rather than conduct a second warrantless search. Second, the policy provides that a “warrant will generally need to be obtained *prior to further investigation*.” SPD Policy 6.180-POL-1 (emphasis added). Moreover, a community caretaking search must be divorced from a criminal investigation. *See State v. Kinzy*, 141 Wn.2d 373, 388, 5 P.3d 668, 677 (2000). NE#1 documented in his supplement report that he went to the apartment “to check again for the victim” and to “photograph the initial disturbance that generated the 9-1-1 call.” NE#1 did not obtain a search warrant for “further investigation.” Instead, NE#1 ordered NE#3 to photograph DV evidence for a criminal investigation. Third, the policy requires that officers act under a community caretaking role in “emergency action, not in their evidence gathering role.” SPD Policy 6.180-POL-1. At the time of the second entry, the Complainant was outside, in custody, and away from the apartment. There was no emergency at that time, nor any immediate threat to a victim known to NE#1. NE#1 was in the apartment in an “evidence gathering role” when he ordered NE#3 to photograph “this stuff.”

NE#1 said he ordered NE#3 to photograph the disturbance to “document plain view evidence that was right in front of us and obvious signs of a domestic disturbance, which is the crime we’re investigating.” NE#1’s order to photograph



the apartment violated policy. The plain view doctrine applies when an officer “make[s] a lawful intrusion into a constitutionally protected area.” SPD Policy 6.180-POL-4. That lawful intrusion may be based on “consent or legitimate police business.” *Id.* As articulated above, NE#1 had no legal justification to enter the apartment. NE#1 did not obtain the occupant’s consent. NE#1 also did not obtain a search warrant—and no exception to the warrant requirement applied—that would have permitted NE#1 to intrude into a constitutionally protected area to conduct legitimate police business. Finally, even if NE#1 had legal justification for reentering the apartment, he was not permitted to extend the length of the search to photograph evidence, even if that evidence was in “plain view.”

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 – Allegation #1

5.140-POL – Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

The Complainant alleged that NE#2 engaged in bias-based policing.

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. This includes different treatments based on the race of the subject. *See id.*

Here, the Complainant alleged that NE#2 and NE#3 “automatically assumed” that he was the suspect because he is a Black male, despite the apartment complex being “occupied by all races.” Had NE#2 and NE#3 attempted to detain any Black male after they entered the apartment building, the Complainant’s allegation would be credible. However, NE#2 and NE#3 were on the seventh floor and approached the apartment unit provided by dispatch, which was at the end of a hallway. They saw the Complainant standing, who “nervously looked up at us and down at his cell phone several times.” Dispatch also noted, based on a 9-1-1 call, that a male choked a female. Under these circumstances, NE#2 had a reasonable basis to say, “Come here. Seattle police” to investigate further. There is no evidence to suggest that NE#2 or NE#3 was biased against the Complainant based on his race, conducted an inadequate primary investigation, or otherwise engaged in bias-based policing.

Accordingly, OPA recommends this allegation is Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #2 – Allegation #2

6.220-POL-2 – Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

The Complainant alleged that NE#2 conducted an unlawful *Terry* stop.

SPD Policy 6.220-POL-2(1) governs *Terry* stops and stands for the proposition that *Terry* stops are seizures of an individual and, as such, must be based on reasonable suspicion to be lawful. SPD policy defines a *Terry* stop as “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity.” SPD Policy 6.220-POL-1. SPD policy further defines reasonable suspicion as “Specific, objective,



articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct.” *Id.* Whether a *Terry* stop is reasonable is determined by looking at “the totality of the circumstances, the officer’s training and experience, and what the officer knew before the stop.” *Id.* While information learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it “cannot provide the justification for the original stop.” *Id.*

Here, the Complainant alleged that NE#2 and NE#3 had no description of the suspect because the 9-1-1 caller did not provide one, so they “automatically assumed” a Black male was their suspect. In other words, the Complainant believed that NE#2 and NE#3 had no reasonable suspicion to conduct a *Terry* stop. OPA disagrees. Specific, objective, and articulable facts created a well-founded suspicion that the Complainant engaged in criminal conduct. Dispatch noted that a male choked a female at a particular apartment unit, which was relayed to NE#2 and NE#3. These 9-1-1 calls occurred at night, starting at 11:09 PM. BWV captured no other residents around—aside from the resident who opened the front door—as NE#2 and NE#3 made their way to the seventh floor. The Complainant was standing near the apartment unit, “nervously looked up at [NE#2 and NE#3] and down at his cell phone several times,” and fled. Although flight—without more—does not constitute reasonable suspicion, *see* Washington Pattern Jury Instruction 342.10, NE#2 and NE#3 could identify several other facts that informed their reasonable suspicion. NE#2 and NE#3 attempted a *Terry* stop on the Complainant, which was lawful and proper under the totality of the circumstances.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #2 – Allegation #3

6.180 – Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies

The Complainant alleged that NE#2 conducted an unlawful warrantless search.

Here, although NE#2 and NE#3 did not have a warrant, they were justified in conducting a community caretaking search at the apartment. NE#2 and NE#3 believed they were initially responding to a choking incident relayed by dispatch. Their need to locate CM#1 was heightened after the Complainant shot at NE#2 during their pursuit. NE#2 and NE#3 “feared [the Complainant] may have killed or seriously injured [CM#1]” in the apartment. As NE#2 and NE#3 entered the apartment, BWV captured NE#2, saying, “Seattle police. Is anybody here? Is anybody hurt? Call out to us.” Consistent with SPD Policy 6.180-POL-1, NE#2 and NE#3 acted under a community caretaking role rather than an evidence-gathering capacity. NE#2 and NE#3 conducted a warrantless search, but it was a lawful and proper community caretaking search of the apartment.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #3 – Allegation #1

5.140-POL – Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing



The Complainant alleged that NE#3 engaged in bias-based policing.

For the reasons at Named Employee #2 – Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #3 – Allegation #2

6.220-POL-2 – Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

The Complainant alleged that NE#3 conducted an unlawful *Terry* stop.

For the reasons at Named Employee #2 – Allegation #2, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #3 – Allegation #3

6.180 – Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies

The Complainant alleged that NE#3 conducted an unlawful warrantless search.

For the reasons at Named Employee #2 – Allegation #3, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**